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U.S. Citizenship
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JAN 18 2005

FILE:

EAC 03 067 54526

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:
Beneficiary

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Uganda who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner had failed to respond to the director's request for additional evidence, hence, she could not make a determination as to the petitioner's eligibility for the benefit sought.

On appeal, the petitioner asserts that she did not receive the request for additional evidence until she received notice of the denial of her petition on February 22, 2004.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been

the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States as an M-1 student on June 27, 1989. She filed an asylum application on July 14, 1994 that was denied on January 28, 1995. The petitioner was referred to an immigration judge on November 25, 1997 and placed in removal proceedings on August 6, 1998. She married a U.S. citizen [REDACTED] September 2, 2000 in [REDACTED] California. An immigration judge ordered the petitioner removed on February 6, 2002. On December 20, 2002, the petitioner filed a Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

Because the petitioner furnished insufficient evidence to establish that she had resided with her citizen husband, that she entered into the marriage in good faith and had been abused by, or the subject of extreme cruelty perpetrated by, her citizen spouse, and that she is a person of good moral character, she was requested on October 9, 2003, to submit additional evidence. The petitioner was granted 60 days in which to present additional evidence, to withdraw the petition, to request a decision based on the evidence submitted, or to request additional time to respond. Based on the petitioner's failure to respond, the director denied the petition.

On appeal, the petitioner asserts that she did not receive the request for additional evidence (RFE) until she received the notice of denial of her petition. It is noted that the RFE was properly addressed to the petitioner at the address listed on the Form I-360. There is no evidence in the file indicating that the RFE was returned to the sender.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The director determined that the petitioner had failed to submit sufficient evidence to establish that she had resided with her citizen spouse during the marriage. The AAO concurs. On the Form I-360 petition, the petition indicated that she had resided with her citizen spouse from September 2000 until June 2001. She provided no corroborating evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner failed to submit a criminal record clearance to establish good moral character. She did provide the director with her own declaration in which she averred that she is not a violent person and that she does not have a criminal record. As evidence that she entered into the marriage in good faith, she submitted her own statement.

The evidence is insufficient to establish that she is a person of good moral character and entered into the marriage in good faith.

To establish that she was battered by her citizen spouse, the petitioner submitted her own statement in which she indicates that her husband became sexually involved with her sister during the marriage and that he subjected her to "frequent physical and mental abuse." The petitioner's statements are insufficiently detailed to establish that she was battered by her spouse. The petitioner also submitted a letter from the [REDACTED] Organization in California that states that the petitioner sought their advice regarding her "troubled marriage." The letter states that the petitioner "has been battered [sic] and abused by her husband [REDACTED] on many occasions." The letter is insufficiently detailed to establish that the petitioner was battered by, or subjected to extreme cruelty perpetrated by, her citizen husband. The petitioner submitted photographs of herself with a bump above her left eye and a bruise under her right eye. She failed to provide any explanation for the injuries depicted in the photographs. The evidence is insufficient to establish that she was battered by, or the subject of extreme cruelty perpetrated by, her citizen spouse.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.